

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
Title 1. General Provisions
Division 2. Office of Administrative Hearings
Chapter 4. Arbitration of Claims Under State Contract Act Contracts

Article 1. General Provisions

- § 1300. Introduction.
- § 1301. Definitions.
- § 1302. Interpretation and Application of Subchapter.
- § 1303. Communication with the Arbitrator.
- § 1304. Representation.
- § 1305. Service and Filing.
- § 1306. Waiver of Rules.

Article 2. Office of Administrative Hearings

- § 1310. Exercise of Administrative Authority.
- § 1311. Payment of Costs.
- § 1312. Docketing.
- § 1313. Bar Pending Public Agency Decision.
- § 1314. Absence of an Appointed Arbitrator.

Article 3. Selection of Arbitrator

- § 1320. Qualifications of Arbitrator.
- § 1321. Selection of Arbitrators.
- § 1322. Notice to Arbitrator of Appointment.
- § 1323. Disclosure and Challenge Procedure.
- § 1324. Vacancy.

Article 4. Authority of Arbitrator

- § 1330. Jurisdiction.
- § 1331. Lack of Jurisdiction.
- § 1332. Acceptance of the Work.
- § 1333. Expert Advisors.
- § 1334. Lack of Prosecution.

Article 5. Simplified Claims Procedure

- § 1340. When Available.
- § 1341. Election.
- § 1342. Simplified Selection of Arbitrator.
- § 1343. Limited Discovery.
- § 1344. Initial Record.
- § 1345. Hearings and Award.
- § 1346. Other Provisions Applicable.

Article 6. Pleadings

- § 1350. Complaint, When Due.
- § 1351. Contents of Complaint in Arbitration.
- § 1352. Joinder; Intervention.
- § 1353. Amendment of Pleadings.
- § 1354. Answer.
- § 1355. Contents of Answer to the Complaint.
- § 1356. Objection to Complaint: Grounds.
- § 1357. Cross-Complaint.

Article 7. Discovery and Motions

- § 1360. Discovery.
- § 1361. Motions.

Article 8. Default

- § 1370. Failure to Respond to Complaint or Cross-Complaint in Arbitration.
- § 1371. Disobedience of Lawful Order.
- § 1372. Default at Time of Hearing.
- § 1373. Default Proceedings.
- § 1374. Entry of Default.
- § 1375. Effect of a Default.

Article 9. Hearings

- § 1380. Prehearing Conference; Preparation for Hearing.
- § 1381. Setting, Notice and Place of Hearings.
- § 1382. Arguments, Briefs and Proposed Findings.
- § 1383. Attendance at Hearings.
- § 1384. Bifurcation of Hearing.
- § 1385. Continuances; Adjournment.
- § 1386. Submission on Agreed Facts or Summary Judgment.
- § 1387. Evidence.
- § 1388. Notice of Judicially Noticeable Facts.
- § 1389. Record of the Proceedings.

Article 10. Decisions and Award

- § 1390. Decision on the Merits.
- § 1391. Decision on Settlement.
- § 1392. Decision on Costs and Attorney's Fees.
- § 1393. Final Award.

Article 1. General Provisions

§ 1300. Introduction.

This subchapter governs the procedure for arbitration proceedings to resolve claims arising under or relating to contracts by Public Agencies under the State Contract Act.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10106 and 10240-10245.4, Public Contract Code.

History

1. New Subchapter 3 (Articles 1-9, Sections 300-382, not consecutive) filed 6- 1-79; effective thirtieth day thereafter (Register 79, No. 22).
2. Amendment (including Subchapter heading) filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
3. Renumbering of former chapter 3 (sections 300-393) to new chapter 4 (sections 1300-1393) and renumbering of former section 300 to new section 393 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
4. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1301. Definitions.

The following definitions apply in this subchapter:

- (a) "Arbitration" means the proceeding for resolving claims pursuant to Sections 10240 through 10245.4 of the Public Contract Code.
- (b) "Arbitrator" means the person or persons selected pursuant to Section 10240.3 of the Public Contract Code.
- (c) "Contract" means an agreement entered into pursuant to the State Contract Act.
- (d) "Contractor" means the prime contractor who entered into the contract with the Public Agency.
- (e) "Decision on Costs" means a decision, in accordance with these rules, the Contract and Section 10240.13 of the Public Contract Code, which results from a separate supplementary Arbitration proceeding after determining the merits of a matter in Arbitration, and which considers assessing costs, interest and fees against a Party or Parties.
- (f) "Decision on the Merits" means the decision, other than a Decision on Costs, resolving the matter which is the subject of an Arbitration proceeding pursuant to these rules, the Contract and Public Contract Code Section 10100 et seq.
- (g) "Interested Party" means a Party other than the Contractor and the Public Agency who may be joined in the Arbitration as a Party under the provisions of Section 10240.9 of the Public Contract Code.
- (h) "Party" means any person so named in the Arbitration pleadings.
- (i) "Petitioner" means the Contractor or Public Agency who files a complaint in

Arbitration of a claim under the provisions of the Public Contract Code.

- (j) "Public Agency" means any Department of the State of California which entered into the Contract. A Public Agency also means a political subdivision or public agency pursuant to Public Contract Code Section 22200.
- (k) "Respondent" means the Contractor or Public Agency against whom a complaint in Arbitration is filed.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240-10245.4 and 22200, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 301 to new section 1301 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of section and Note filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1302. Interpretation and Application of Subchapter.

- (a) The Arbitrator shall interpret and apply the provisions of this subchapter insofar as they relate to the Arbitrator's powers and duties. If there is more than one Arbitrator, the interpretation and application of these rules shall be decided by a majority vote. In addition to the authority expressly granted by law or otherwise by these rules, the Arbitrator shall have the power to issue such orders as necessary to implement these rules.
- (b) The Office of Administrative Hearings shall in the administration of Arbitrations hereunder interpret and apply the rules of this subchapter relating to the powers and duties of that office.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.8 and 10245.4, Public Contract Code.

History

1. Amendment of NOTE filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 302 to new section 1302 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).

§ 1303. Communication with the Arbitrator.

No disclosure of any offers of settlement made by any Party shall be made to the Arbitrator prior to the filing of the Decision on the Merits, without the express consent of all Parties.

There shall be no *ex parte* communication by counsel or any Party with the Arbitrator or a potential Arbitrator on the merits of a contested matter in the absence of or without the express consent of all Parties.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 303 to new section 1303 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1304. Representation.

- (a) In proceedings under this subchapter an individual Party may appear in person, a corporate Party by an officer or employee thereof, a partnership or joint venture Party by an authorized member or employee thereof, or any of these by a member in good standing of the State Bar of California.
- (b) The Public Agency shall appear in proceedings under this subchapter either by its authorized counsel or other person authorized to act on behalf of the agency.
- (c) Upon motion pursuant to Section 1361, a member in good standing of the State Bar of California who is counsel of record for a Party may in the discretion of the Arbitrator associate out-of-state counsel provided there has been compliance with the requirements of California Code of Civil Procedure section 1282.4 which sets forth the conditions for pro hac vice admission to arbitration in California.
- (d) Parties shall at all times keep the Office of Administrative Hearings and each other currently advised as to any change, addition or substitution of representation or any change in the address or telephone number of its representative(s).

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.8, and 10245.4, Public Contract Code.

History

1. Amendment of NOTE filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 304 to new section 1304 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of subsection (a) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments adopting new subsection (c), relettering subsection and amending newly designated subsection (d) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

§ 1305. Service and Filing.

- (a) Whenever a Party is required or permitted to file any document, it shall be filed in the Sacramento office of the Office of Administrative Hearings together with proof of service of a copy on all other Parties, unless filing prior to service is authorized for good cause by the Office of Administrative Hearings.
- (b) Except for subpoenas which may be served by the same methods as in civil actions, service of documents between Parties may be made in the manner

provided in Code of Civil Procedure Section 1013, except that a form of mailing providing for a return receipt which proves the date of delivery or a method provided for service of a summons in a civil action must be used for delivery of the following:

- (1) Any pleading by which an Interested Party is to be joined under Section 1352;
- (2) The Decision on the Merits provided for in Section 1390;
- (3) The Arbitration award provided for in Section 1393;
- (4) Any other order or decision which is a final disposition of the Arbitration.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.1, 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 305 to new section 1305 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Editorial correction of subsection (a) (Register 97, No. 25).
4. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1306. Waiver of Rules.

Any Party who proceeds with the Arbitration after knowledge that any provision or requirement of this subchapter has not been complied with, and who fails to state objections thereto in writing, shall be deemed to have waived the objection unless it is an objection that the Arbitrator has no jurisdiction of the subject of the claim.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
 2. Renumbering of former section 306 to new section 1306 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
 3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
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Article 2. Office of Administrative Hearings

§ 1310. Exercise of Administrative Authority.

- (a) The Office of Administrative Hearings shall provide all administrative services for Arbitrations under this subchapter except that, unless otherwise agreed to by the Parties and the Office of Administrative Hearings, such services shall not include the services of reporters or transcribers or personnel of the Office of Administrative Hearings as Arbitrators.
- (b) The services of the Arbitrator shall be provided by a contract or contracts between the Office of Administrative Hearings, and the person or persons selected to be the Arbitrator under applicable law, these rules, and as consented to by the Parties. Such agreement shall conform to State law, policies and procedures for the employment of expert or personal services. The Office of Administrative Hearings shall compensate the Arbitrator directly.
- (c) The Office of Administrative Hearings shall be the repository of the official file for any proceeding under these rules until expiration of the period for an appeal, and may thereafter dispose of any such file, subject to Government Code Section 14755.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 14755, Government Code; and Sections 10240.5 and 10245.4, Public Contract Code.

History

- 1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
- 2. Renumbering of former section 310 to new section 1310 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
- 3. Amendment of section and Note filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1311. Payment of Costs.

The Office of Administrative Hearings in its discretion may order the Petitioner, Respondent, or any Interested Party at any time to make deposits as may be necessary to assure payment of costs incurred in Arbitration as prescribed by these rules.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.13 and 10245.4, Public Contract Code.

History

- 1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
- 2. Renumbering of former section 311 to new section 1311 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).

§ 1312. Docketing.

Promptly upon receiving the complaint, the Office of Administrative Hearings shall docket the Arbitration and shall notify all Parties designated in the complaint of the docketing.

Note: Authority cited: Sections 10240.5, 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Amendment filed 5-7-92; operative 6-8-92 (Register 92, No. 19).
3. Renumbering of former section 312 to new section 1312 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
4. Amendment of section and Note filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1313. Bar Pending Public Agency Decision.

If a complaint in Arbitration is filed prior to issuance of a final written decision by the Public Agency and less than 240 days have expired since the date of acceptance of the work, the Office of Administrative Hearings shall dismiss the complaint without prejudice to the filing of a timely complaint.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240, 10240.2, 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 313 to new section 1313 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1313 to new section 1381(a), and renumbering and amendment of former section 1314 to new section 1313 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1314. Absence of an Appointed Arbitrator.

Prior to selection of the Arbitrator or in the absence of the appointed Arbitrator, the Office of Administrative Hearings may decide, with consent of the Petitioner and Respondent, procedural and discovery questions as necessary to avoid delay in the expeditious completion of the Arbitration proceedings.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
 2. Amendment filed 5-7-92; operative 6-8-92 (Register 92, No. 19).
 3. Renumbering of former section 314 to new section 1314 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
 4. Renumbering of former section 1314 to new section 1313, and renumbering and amendment of former section 1315 to new section 1314 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
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Article 3. Selection of Arbitrator

§ 1320. Qualifications of Arbitrator.

Any Arbitrator appointed pursuant to Section 1321 shall be neutral, subject to disqualification for the reasons specified in Section 1323. If the Petitioner and Respondent agree to a specific Arbitrator, such Arbitrator shall not be subject to disqualification for said reasons, provided appropriate disclosure has been made.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 320 to new section 1320 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1321. Selection of Arbitrators.

- (a) Unless the Petitioner and Respondent otherwise agree, there shall be only one Arbitrator who shall be selected as hereinafter provided.
- (b) The Petitioner and Respondent shall have until 20 days after service of the complaint upon Respondent to agree on the selection of an Arbitrator. If no such agreement is reached, the Petitioner and Respondent shall, within 30 days after service of the complaint upon Respondent, file a list of 5 acceptable Arbitrators ranked in order of preference with the Office of Administrative Hearings. Notwithstanding Section 1305, this list need not be sent to the other parties. OAH shall strike any names over five. If either or both Petitioner or Respondent fails to submit a list or to include five names on its list the Office of Administrative Hearings shall compose or complete the list with names of persons selected at random, who have been enrolled on the panel certified by the Public Works Contract Arbitration Committee and who have indicated a willingness to serve as an Arbitrator in the location for the hearing. Names selected at random shall be listed and accorded preference in the order of their selection. If one or more names appear in common on both lists submitted by the Petitioner and Respondent, the Office of Administrative Hearings shall appoint the Arbitrator from among such names and in accordance with the preferences indicated by the lists.
- (c) If no name on the lists of five names appears in common, the Office of Administrative Hearings shall combine the listed names with ten additional names from the certified panel and submit simultaneously to the Petitioner and Respondent a list of names so constituted. The names selected from the certified panel shall be selected at random from those who have indicated a willingness to serve as an Arbitrator in the location for the hearing unless the Petitioner and

Respondent agree that those so named be limited to persons with expressly designated special technical expertise or qualifications.

- (d) The Petitioner and Respondent each shall have 15 days from the mailing date in which to cross off any names to which it objects, number the remaining names indicating the order of preference, and return the list to the Office of Administrative Hearings with a copy to each other. If either or both Petitioner or Respondent does not return the list within the time specified or does not indicate an order of preference, all persons named therein shall be deemed equally acceptable.

From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the Office of Administrative Hearings shall appoint the Arbitrator. If for any reason the appointment cannot be made from the submitted list, the Office of Administrative Hearings shall repeat the submission process with an entirely different list of 20 names selected at random from those who have indicated a willingness to serve as an Arbitrator in the location for the hearing.

If after this second submission an Arbitrator has not been selected, either Petitioner or Respondent may petition the Superior Court to appoint the Arbitrator from among those who have indicated a willingness to serve as an Arbitrator in the location for the hearing.

- (e) If the name of a person is submitted as an acceptable Arbitrator and the person is not enrolled on the certified panel of Arbitrators, the Petitioner or Respondent submitting such name at the same time shall also submit a statement of qualifications similar to that required of persons on the certified panel. Failure to submit the required statement of qualifications shall result in elimination of that person's name from the list submitted.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.3, 10240.5, 10245.3 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 321 to new section 1321 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of subsections (b), (c) and (d) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments of subsection (b) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

§ 1322. Notice to Arbitrator of Appointment.

Notice of the appointment of the Arbitrator shall be mailed to the Arbitrator by the Office of Administrative Hearings, together with a copy of these Rules and an oath of office as prescribed by the Office of Administrative Hearings.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment of NOTE filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 322 to new section 1322 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).

§ 1323. Disclosure and Challenge Procedure.

- (a) On notice of selection, the prospective Arbitrator shall disclose to the Office of Administrative Hearings any circumstances likely to prevent a prompt hearing and decision or to create a presumption of bias, including any past or present relationship with the Parties, their officers or employees, or their counsel, or other representative. Upon disclosure, the Office of Administrative Hearings shall advise the Parties of such information in writing. Within ten days from the date of receipt of such information, the prospective Arbitrator shall be disqualified by the Office of Administrative Hearings if an objection is made to the Office of Administrative Hearings by Petitioner or Respondent. If neither Petitioner or Respondent objects within the time specified, the prospective Arbitrator shall be deemed acceptable.
- (b) An Arbitrator, once selected, has a continuing duty to disclose to the Office of Administrative Hearings any circumstances likely to prevent a prompt hearing and decision or to create a presumption of bias, including any past or present relationship with the Parties, their officers or employees, or their counsel, or other representative. Upon disclosure, the Office of Administrative Hearings shall advise the Parties of such information in writing. Within ten days from the date of receipt of such information, the Arbitrator shall be disqualified by the Office of Administrative Hearings if an objection is made to the Office of Administrative Hearings by the Petitioner or Respondent and if the Office of Administrative Hearings determines that good cause for disqualification exists. If neither Petitioner or Respondent objects within the time specified, the Arbitrator shall continue to be deemed acceptable.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 323 to new section 1323 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments of subsection (b) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

§ 1324. Vacancy.

If after selection, any Arbitrator shall die, refuse, or be unable to perform the duties of office or be disqualified during the course of the proceeding, a substitute Arbitrator shall be identified from the list of names as preferred by the Petitioner and Respondent and from which the original Arbitrator was selected if possible or in the manner set forth in Section 1321. If a vacancy as described above occurs, the merits of the matter shall be reheard unless otherwise agreed to by the Petitioner and Respondent.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.3, 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
 2. Renumbering of former section 324 to new section 1324 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
 3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
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Article 4. Authority of Arbitrator

§ 1330. Jurisdiction.

Jurisdiction of the Arbitrator shall be in accordance with Article 7.1 (commencing with Section 10240) of the Public Contract Code.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240-10240.13, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 330 to new section 1330 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Repealer of former section 1330 and renumbering of former section 1331 to new section 1330 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1331. Lack of Jurisdiction.

The Arbitrator may raise the issue of jurisdiction to proceed by an appropriate order after affording the Parties an opportunity to be heard.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 331 to new section 1331 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1331 to new section 1330, and renumbering and amendment of former section

1332 to new section 1331 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1332. Acceptance of the Work.

If acceptance of the work is disputed, an Arbitrator will be appointed pursuant to Section 1342. Unless the Parties agree otherwise, the Arbitrator selected under this section shall decide only the issue of whether the contract work was or should have been accepted.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 332 to new section 1332 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1332 to new section 1331 and new section 1332 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1333. Expert Advisors.

- (a) With consent of the Parties the Arbitrator may select expert or technical advisors. Such services shall be provided by a contract between the Office of Administrative Hearings and the advisor. Such contract shall be on terms and conditions which are consistent with the State's laws, policies, and procedures.
- (b) Petitioner or Respondent may object for cause to the use of a particular individual as an advisor. If such objection is not timely made, it shall be deemed waived.
- (c) An expert technical advisor, except with the written consent of Petitioner and Respondent which shall be filed in the record, shall not be in communication with the Arbitrator on the merits of a contested matter except:
 - (1) in writing, with copies served on all Parties, or
 - (2) orally on the record in the presence of or after due notice to all Parties, and all evidence, opinions or other information which the expert testifies to or furnishes is subject to cross-examination and pertinent objections.
- (d) A non-attorney Arbitrator may secure an attorney advisor by contract arranged through the Office of Administrative Hearings as provided in subsection (a) above to assist in the preparation of the Arbitration award. The attorney advisor may not participate in the Arbitration proceeding in any other way providing, however, that if necessary to the orderly prosecution of the Arbitration hearing, the Arbitrator may submit to the attorney advisor written questions of law. Any advice in response to those questions shall be in writing and incorporated in the record of the proceeding.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 333 to new section 1333 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Editorial correction of subsection (d) (Register 97, No. 25).
4. Amendment of subsections (a)-(c)(2) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1334. Lack of Prosecution.

- (a) The Arbitrator shall have discretion to dismiss any claim where the Petitioner fails to prosecute the claim by failing to perform discovery or otherwise fails to take any significant action to move the case to hearing for a period of 18 months, measured from the filing of the complaint.
- (b) The Arbitrator shall dismiss any claim where the Petitioner fails to prosecute the claim by failing to perform discovery or otherwise fails to take any significant action to move the case to hearing for a period of three years, measured from the filing of the complaint.
- (c) The Arbitrator shall dismiss a claim if the hearing has not commenced within five years after the filing of the complaint.
- (d) If an Arbitrator has not been selected or is absent due to resignation, death or disability, the Office of Administrative Hearings shall have authority to dismiss the claim as specified in (a), (b), or (c).

Note: Authority cited: Sections 10240.5, 10240.11 and 10245.4, Public Contract Code. Reference: Sections 10240.5, 10240.11 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 334 to new section 1334 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1334 to new section 1382 and renumbering and amendment of former section 1335 to new section 1334 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

Article 5. Simplified Claims Procedure

§ 1340. When Available.

The simplified claims procedure provided for in this article is available by election of either Petitioner or Respondent on claims which in the aggregate do not exceed \$50,000 in one complaint and a final written decision or ruling has been issued by the Public Agency. It is also available by written stipulation of both Parties on claims which in the aggregate exceed \$50,000 in one complaint, whether Arbitration is pursued after a final written decision or under the 240 day rule.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 340 to new section 1340 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of article heading and renumbering of former section 1340 to new section 1352 and renumbering and amendment of former section 1375 to new section 1340 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1341. Election.

The Petitioner or Respondent elects to have its claims resolved with use of the simplified claims procedure by indicating its election with or in the filing of its first pleading in Arbitration and by attaching thereto a copy of the written decision or ruling of the department or agency. In the complaint or answer, the Party electing the simplified claims procedure shall state all facts and conclusions at issue. The Arbitrator may consider a request for the simplified claims procedure after the filing of the first pleading except such request shall be granted only for mistake, inadvertence, surprise or excusable neglect.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 341 to new section 1341 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1341 to new section 1360 and renumbering and amendment of former section 1376 to new section 1341 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1342. Simplified Selection of Arbitrator.

- (a) The Petitioner and Respondent may select an Arbitrator by agreement.
- (b) If the Petitioner and Respondent do not agree upon an Arbitrator, the Office of Administrative Hearings shall promptly prepare a list of twenty potential Arbitrators selected at random from those who have indicated a willingness to serve as an Arbitrator in the location for the hearing. Within ten days from the mailing, the Petitioner and Respondent each may cross off the names of not more than ten to which it objects, numbering the remaining names in the order of preference and return the list to the Office of Administrative Hearings with a copy to the other. If either the Petitioner or Respondent does not return the list within the time specified or does not indicate an order of preference, all persons named therein shall be deemed equally acceptable. The Office of Administrative Hearings shall appoint the Arbitrator from among the persons whose names remain in accordance with the designated order of mutual preference. The disclosure and challenge procedure in Section 1323 shall apply. If for any reason

the appointment cannot be made from the submitted list, the Office of Administrative Hearings shall repeat the process until an Arbitrator is selected.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 342 to new section 1342 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1342 to new section 1380 and renumbering of former section 1377 to new section 1342, including amendment of section heading and section, filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments of subsection (b) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

§ 1343. Limited Discovery.

Not more than 25 days and not less than 10 days prior to a hearing, the Arbitrator, on written request of a Party, may direct the Parties:

- (1) to disclose the names and addresses of witnesses to the extent known to each Party,
- (2) afford an opportunity to the Parties to inspect and copy any pertinent writings, documents, or exhibits in the possession, custody, or control of other Parties, and
- (3) to exchange all writings to be offered in evidence. In the absence of agreement, for good cause shown, the Arbitrator may permit limited interrogatories and depositions of percipient witnesses. The foregoing constitutes the sole and exclusive discovery in simplified claims procedure.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 343 to new section 1343 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1343 to new section 1385 and renumbering and amendment of former section 1378 to new section 1343 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1344. Initial Record.

No verbatim record of the proceedings is required. The claim file and written record, if any, produced at the highest agency level of review, including all written materials submitted by the Petitioner or Respondent and reviewed by the Public Agency, shall be forwarded to the Arbitrator by the Public Agency with or prior to filing of an answer and shall constitute the initial record before the Arbitrator. The Parties may submit and file in

advance of the hearing any additional written, photographic or demonstrative evidence or may object to materials submitted by other Parties. In addition, summaries of anticipated testimony, declarations of witnesses and written arguments or briefs may also be required by the Arbitrator. Based upon the initial record and any additional evidence and written arguments submitted in advance of the hearing, the Arbitrator shall establish the issues to be tried.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 344 to new section 1344 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1344 to new section 1361 and renumbering and amendment of former section 1379 to new section 1344 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1345. Hearings and Award.

- (a) No decision made by a Public Agency shall be conclusive on any issue in the Arbitration and each Party shall have the burden of proving its affirmative allegations by a preponderance of the evidence as in ordinary civil actions.
- (b) Affidavits of witnesses are admissible if the witness is competent and the statements are relevant to the issues established by the Arbitrator and provided they are filed at least 15 days in advance of the hearing. If within at least 5 days in advance of the hearing a Party files a written objection to the proffered testimony, such Party shall be entitled to cross-examine any such witness. Upon failure to produce the witness for cross-examination, the affidavit shall be disregarded as evidence in the case, except to the extent it is otherwise admissible hearsay.
- (c) The award shall be in writing affirming, disaffirming or modifying the written decision of the Public Agency and shall be made setting forth the reasons therefor with findings of fact and conclusions of law, unless waived by the Parties. The decision shall be in accordance with the law of this state, supported by substantial evidence.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10240.8, Public Contract Code.

History

1. Amendment of subsection (b) filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14)
2. Renumbering of former section 345 to new section 1345 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1345 to new section 1387 and renumbering and amendment of former section 1380 to new section 1345 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1346. Other Provisions Applicable.

Except as herein provided to the contrary, the provisions of Chapter 4, "Public Works Contract Arbitrations," (Division 2, Title 1, California Code of Regulations), shall be applicable to the simplified claims procedure.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
 2. Renumbering of former section 346 to new section 1346 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
 3. Renumbering of former section 1346 to new section 1388 and renumbering and amendment of former section 1381 to new section 1346 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
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Article 6. Pleadings

§ 1350. Complaint, When Due.

- (a) Pursuant to section 10240.1 of the Public Contract Code, an Arbitration is commenced by filing with the Office of Administrative Hearings in Sacramento a complaint in Arbitration within 90 days from receipt of the final written decision by the Public Agency on the claim or, if no final written decision has been issued, at any time subsequent to 240 days after acceptance of the Contract work. The Petitioner shall serve copies of the complaint on the Respondent and any other named Party pursuant to Section 1305.
- (b) Arbitration of a dispute with the Contractor may be commenced by the Public Agency by filing with the Office of Administrative Hearings and serving on the Contractor the Public Agency's complaint in Arbitration. The time limit for filing such a complaint by the agency is as limited by the Contract or applicable law.
- (c) The Petitioner shall submit with the complaint in Arbitration a non-refundable filing fee established by, and payable to, the Office of Administrative Hearings and the proof of service required in Section 1305, or the complaint is deemed not to be filed.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 350 to new section 1350 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of article heading and renumbering of former section 1350 to new section 1381(b) and renumbering and amendment of former section 1363 to new section 1350 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments of subsection (a) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

§ 1351. Contents of Complaint in Arbitration.

- (a) A complaint by a Contractor shall be limited to the claim or claims presented to the Public Agency as required by the Contract.
- (b) A complaint by a Contractor shall be verified in accordance with the provisions of Section 446 of the Code of Civil Procedure and shall contain:
 - (1) The caption, title and names of the Parties, as in civil actions, and the Contract number or other Contract designation.
 - (2) A copy of the final written decision and date of service of the decision from which the Arbitration is demanded.
 - (3) If no final written decision has been issued, a copy of the document that sets forth the date of acceptance of the Contract work.
 - (4) The name and address, for purposes of service, of the Petitioner.
 - (5) The name and address of any Interested Party, if joinder is requested, and any other Party.
 - (6) A statement to the effect that the claim or claims were previously presented to the Public Agency for decision in compliance with all Contract claims procedures.
 - (7) In ordinary and concise language, a statement of the claim or claims alleging the basis, with appropriate references to the Contract, for and the dollar amount of each claim.
- (c) A complaint by a Public Agency shall contain:
 - (1) The caption, title and names of the Parties, as in civil actions, and the Contract number or other Contract designation.
 - (2) The name and address, for purposes of service, of the Petitioner.
 - (3) The name and address of any Interested Party, if joinder is requested, and any other Party.
 - (4) In ordinary and concise language, a statement of the claim or claims alleging the basis, with appropriate references to the Contract, for and the dollar amount of each claim.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.2 and 10240.5, Public Contract Code.

History

- 1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
- 2. Renumbering of former section 351 to new section 1351 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
- 3. Editorial correction of section number (Register 97, No. 27).
- 4. Renumbering of former section 1351 to new section 1383 and renumbering of former section 1364 to new section 1351, including amendment of section and Note filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
- 5. Amendment by General Services, Transportation and Water Resources departments of subsection hierarchy designations filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

§ 1352. Joinder; Intervention.

- (a) A Petitioner or Respondent may name an Interested Party in a complaint or cross-complaint as a Party whose joinder in the Arbitration is demanded:
- (1) If done in the complaint first filed or when first answering a complaint or cross-complaint.
 - (2) At a later time, only if authorized by the Arbitrator upon motion timely and diligently made.
- (b) At any time prior to a hearing on the merits, an Interested Party may be permitted to join in and be bound by the Arbitration proceedings if required by the terms of the Interested Party's contract or by the agreement of the Parties. Such joinder shall not be required if it unduly delays or complicates the expeditious conclusion of the Arbitration unless a failure to order joinder would be likely to produce inconsistent decisions from separate proceedings among the Parties.
- (c) Where an Interested Party is made a Party to the Arbitration, the joinder shall be limited to the issues raised by the Respondent and Petitioner in the pleadings.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10240.9, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 352 to new section 1352 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1352 to new section 1373 and renumbering of former section 1340 to new section 1352, including amendment of section heading and section, filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1353. Amendment of Pleadings.

Petitioner may amend the complaint prior to the filing of an answer to the complaint by filing the amendment with the Office of Administrative Hearings.

Amendments of the answer to the complaint or of the complaint subsequent to the filing of the answer to the complaint shall be made only for good cause shown. All amendments shall be deemed controverted. Objections to the amendments may be made orally and shall be noted in the record.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 353 to new section 1353 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1353 to new section 1384 and renumbering of former section 1365 to new section 1353 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1354. Answer.

- (a) Not later than thirty (30) days after service of the complaint Respondent shall file an answer to the complaint.
- (b) When the state or any public agency or officer of the state is Petitioner, the answer shall be verified, unless an admission of the truth of the complaint might subject the Party to a criminal prosecution. If an objection to the complaint is filed under Section 1356, time to answer is extended until 30 days after the Arbitrator has ruled on the objection. The time to answer may be extended by agreement of the relevant Parties, but an extension of time to answer does not extend the time to file an objection to the complaint under Section 1356.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

- 1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
- 2. Renumbering of former section 354 to new section 1354 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
- 3. Renumbering of former section 1354 to new section 1389 and renumbering and amendment of former section 1366 to new section 1354 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1355. Contents of Answer to the Complaint.

- (a) The answer to the complaint shall be in writing and shall set forth in ordinary and concise language a direct statement of Respondent's defenses to each Claim asserted in the complaint together with any affirmative defenses or cross-complaint to be asserted.
- (b) Any allegation of the complaint which is not denied in the answer shall be tried as uncontested and evidence is inadmissible to controvert any such allegation.
- (c) Any objections listed in Section 1356 may be set forth in the answer, whether or not asserted under Section 1356.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

- 1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
- 2. Renumbering of former section 355 to new section 1355 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
- 3. Repealer of former section 1355 and renumbering and amendment of former section 1367 to new section 1355 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1356. *Objection to Complaint: Grounds.*

- (a) Not later than 30 days after service of the complaint a Respondent, in lieu of filing an answer, may file an objection to the complaint.
- (b) The following objections may be raised:
 - (1) The lack of jurisdiction.
 - (2) Untimeliness in filing the complaint in Arbitration.
 - (3) Failure to state a claim upon which any relief can be granted.
 - (4) Ambiguity, uncertainty or unintelligibility of the complaint or parts thereof.
 - (5) Failure to comply with the statutes or regulations governing these Arbitrations.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

- 1. Renumbering and amendment of former section 1368 to new section 1356 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1357. *Cross-Complaint.*

- (a) Subject to the provisions of these rules and applicable law including joinder of Interested Parties, cross-complaints may be filed and served as follows:
 - (1) At the time of answering a complaint or cross-complaint; or
 - (2) At a later time, if authorized by the Arbitrator upon a showing of good cause.
- (b) The provisions of Sections 1350-1356 relating to complaints shall also apply to cross-complaints.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.9 and 10245.4, Public Contract Code.

History

- 1. Renumbering and amendment of former section 1369 to new section 1357 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
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Article 7. Discovery and Motions

§ 1360. *Discovery.*

Parties shall have the following obligations with respect to discovery in Arbitrations under this subchapter:

- (a) Discovery (including inspection and production of documents and records, depositions, interrogatories, admissions, etc.) by agreement of the Parties is encouraged. For this purpose it is the duty of the Parties or their counsel to communicate with each other before initiating discovery to determine whether a reasonable agreement for discovery can be made. This subsection does not limit or modify the rights and obligations of the Parties with respect to discovery set forth in Section 1283.05 of the Code of Civil Procedure, except subdivision (e) thereof, as specified in Section 10240.11 of the Public Contract Code.
- (b) Inspection and production of discoverable documents and records is the preferred initial means of discovery.
- (c) Notwithstanding the provisions of Sections 2030 and 2033 of the Code of Civil Procedure, all original documents relating to interrogatories and requests for admissions and all notices of the taking of deposition and inspection and production of documents shall be filed with the Office of Administrative Hearings and copies shall be served on all Parties to the Arbitration.
- (d) On request of any Party made not less than 30 days prior to the hearing on the merits, each Party shall notify the other Parties in writing of the identity and current address of each expert witness to be presented as a witness at the hearing and a brief narrative statement of the qualifications of such witnesses and the general substance of the testimony which the witness is expected to give. At the same time, the Parties shall also exchange all written reports prepared by such witnesses and each Party shall have a reasonable opportunity to depose such witnesses. The Arbitrator may permit a Party to call an expert witness not included on the list upon a showing of good cause.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10240.11, Public Contract Code.

History

- 1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
- 2. Repealer filed 5-7-92; operative 6-8-92 (Register 92, No. 19).
- 3. Renumbering of former section 360 to new section 1360 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
- 4. Amendment of article heading and renumbering and amendment of former section 1341 to new section 1360 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1361. Motions.

All motions by the Parties shall be in writing, unless made on the record during hearing, and shall clearly state the action requested and the grounds relied upon. The original written motion, together with evidence of service of true copies thereof on all other Parties and the Arbitrator, shall be filed in the Office of Administrative Hearings. The Arbitrator shall conduct such proceedings and make such orders as deemed necessary to dispose of the issues raised by the motion.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
 2. Repealer filed 5-7-92; operative 6-8-92 (Register 92, No. 19).
 3. Renumbering of former section 361 to new section 1361 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
 4. Renumbering and amendment of former section 1344 to new section 1361 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
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Article 8. Default

§ 1370. Failure to Respond to Complaint or Cross-Complaint in Arbitration.

Failure of any Party to file an answer or objection to a complaint or cross-complaint pursuant to this subchapter is cause for holding such Party to be in default.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 370 to new section 1370 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1371. Disobedience of Lawful Order.

The failure or refusal of any Party to comply, after due notice, with any lawful order of the Arbitrator is cause for holding the Party to be in default.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 371 to new section 1371 filed 6-20-97; operative 7-1-97 pursuant to Government

- Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
 4. Amendment of section by General Services, Transportation and Water Resources departments filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

§ 1372. Default at Time of Hearing.

The failure or refusal of a Party of record to (1) timely appear at a hearing on the merits after due notice thereof, or (2) comply with any lawful order of the Arbitrator, at the hearing, is cause for holding such Party to be in default.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 372 to new section 1372 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1372 to new section 1374 and renumbering and amendment of former section 1373 to new section 1372 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1373. Default Proceedings.

When the matter is tried as uncontested, the Party not in default has the burden of proof of affirmative allegations, and affirmative findings shall be based only on the express admissions of the defaulted Party, judicially noticeable facts, or on evidence which would support findings of fact in an uncontested civil trial, or any combination thereof.

In proceedings conducted under this section, a Party in default has no right to cross-examine witnesses, or present any evidence to controvert the allegations of the complaint or the answer, or otherwise present any evidence.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 373 to new section 1373 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1373 to new section 1372 and renumbering of former section 1352 to new section 1373, including amendment of section heading and section, filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1374. Entry of Default.

The entry in the record of the default of any Party for cause shall be by order of the Arbitrator either upon written motion and proceedings pursuant to Section 1373, or upon stipulation of the Parties.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 374 to new section 1374 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1374 to new section 1375 and renumbering and amendment of former section 1372 to new section 1374 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1375. Effect of a Default.

Upon a finding by the Arbitrator on the record that a Party is in default, the Arbitration shall proceed in accordance with Section 1373 with respect to that Party.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Renumbering and amendment of former Article 9 (Sections 380-382) to Article 10 (Sections 390-393) and new Article 9 (Sections 375-381) filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 375 to new section 1375 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1375 to new section 1340 and renumbering and amendment of former section 1374 to new section 1375 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

Article 9. Hearings

§ 1380. Prehearing Conference; Preparation for Hearing.

- (a) Unless the Petitioner, Respondent and Arbitrator otherwise agree, the Arbitrator shall order a prehearing conference. At the conference, the Arbitrator may consider, as appropriate, any of the following:
 - (1) The simplification or clarification of the issues;
 - (2) The possibility of obtaining stipulations, admissions, agreements on documents, understanding on matters already of record, use of affidavits, or similar agreements which will avoid unnecessary proof;
 - (3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
 - (4) The possibility of agreement disposing of all or any of the issues in dispute;
 - (5) The desirability or necessity for prehearing briefs;
 - (6) A timetable for completion of discovery;
 - (7) Date for commencement of the hearing on the merits and an estimate of time

for the hearing;

(8) Such other matters as may aid in the disposition of the Arbitration. The results of the conference shall be reduced to writing by the Arbitrator in the presence of the Parties, and this writing shall thereafter constitute part of the record.

(b) The Parties may be ordered to exchange, at the prehearing conference, or at some other time in advance of the hearing, all exhibits each Party intends to offer at the hearing (other than exhibits exclusively used for impeachment or rebuttal); and may be ordered to index, offer and file some or all of the exhibits in advance of the hearing. The Party offering an exhibit at the hearing shall provide sufficient copies so that each Party, the Arbitrator and the witness have a copy.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Renumbering of former section 380 to new section 1380 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25)
2. Amendment of article 9 heading (including change of placement), renumbering of former section 1380 to new section 1345, and renumbering and amending former section 1342 to new section 1380 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d)(Register 97, No. 33).

§ 1381. *Setting, Notice and Place of Hearings.*

(a) The Arbitrator, in coordination with the Parties and the Office of Administrative Hearings, shall set the date and time for all hearings conducted under these rules and shall serve written notice thereof on all Parties no later than 15 days prior to the date of hearing, provided, however, that no less than 30 days' notice shall be given for the hearing on the merits of the Arbitration.

(b) In the absence of agreement of the Petitioner and Respondent, the Arbitrator may, for the convenience of Petitioner, Respondent and the Arbitrator, order any hearing at any location.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 1670, Civil Code; Executive Order No. B50-78; and Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Renumbering of former section 381 to new section 1381 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
2. Renumbering of former section 1381 to new section 1346, renumbering and amendment of former section 1313 to new section 1381(a), and renumbering and amendment of former section 1350 to new section 1381(b) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1382. *Arguments, Briefs and Proposed Findings.*

(a) The Arbitrator may require the Parties before, during or following a hearing to submit arguments or briefs on some or all of the issues.

- (b) As a part of or in lieu of argument or briefs, the Arbitrator, prior to taking the issues under submission for decision, may require the Parties to submit proposed findings of fact and conclusions of law on some or all of the issues. When a proposed finding of fact is thus required to be submitted on an issue, the failure of a Party to propose such finding may be treated by the Arbitrator as a waiver of that Party's contentions with respect thereto.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Renumbering and amendment of former section 1334 to new section 1382 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1383. Attendance at Hearings.

- (a) The Arbitration hearings shall be open to the public unless the attendance of individuals or groups of individuals would disrupt or delay the orderly conduct or timely completion of the proceedings.
- (b) Subject to subdivisions (c) and (d), the Arbitrator, at the request of any Party, may exclude any witness not at the time under examination so that such witness cannot hear the testimony of other witnesses.
- (c) A Party to the Arbitration cannot be excluded under this section.
- (d) If a person other than a natural person is a Party to the Arbitration, an officer or employee designated by its attorney or representative is entitled to be present to assist in the presentation of that Party's case.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Renumbering and amendment of former section 1351 to new section 1383 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1384. Bifurcation of Hearing.

The Arbitrator may order separate determination of issues, including liability and damages, in any proceeding which is the subject of this subchapter.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Renumbering of former section 1353 to new section 1384 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1385. Continuances; Adjournment.

- (a) Continuances or extensions of time may be permitted for good cause or on stipulation of all relevant Parties. A showing of good cause for any continuance or the basis of the stipulation shall be set forth in the record.
- (b) The Arbitrator may take adjournments on the request of a Party or on the Arbitrator's own initiative, provided that, to the fullest extent practicable and consistent with the rights of the Parties the Arbitration hearing shall not be adjourned after the commencement of an evidentiary hearing on the merits.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

- 1. Renumbering and amendment of former section 1343 to new section 1385 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1386. Submission on Agreed Facts or Summary Judgment.

- (a) By stipulation of the relevant Parties, any matter or issue pending before the Arbitrator may be submitted on an agreed statement of facts. The Arbitrator may permit arguments thereon, written or oral, and render an award based on the agreed statements submitted and such arguments.
- (b) At any time prior to commencement of the hearing on the merits any Party may file a motion for summary judgment as provided for in the Code of Civil Procedure Section 437c. Where the declarations and affidavits filed therein by the Parties indicate that no triable issue as to any material fact exists, the Arbitrator shall enter the award based upon the facts, the law and the Contract.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

- 1. Renumbering and amendment of former section 1347 to new section 1386 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1387. Evidence.

- (a) Oral evidence shall be taken only on oath or affirmation.
- (b) Each Party shall have these rights: to present evidence relevant to the issues; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut the evidence against the Party. Any Party, or person identified with such Party, may be called and examined as if under cross-examination by any adverse Party.
- (c) The hearing need not be conducted according to technical rules relating to

evidence and witnesses. Any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, provided, however, hearsay evidence even though not objected to shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. However, such evidence shall be subject to the exclusions of Evidence Code Sections 1151, 1152, and 1154. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

(d) The following additional exception to the "best evidence" rule (Evidence Code Section 1500) applies: A duplicate is admissible to the same extent as an original unless:

(1) A genuine question is raised as to the authenticity of the original, or

(2) In the circumstances it would be unfair to admit the duplicate in lieu of the original. "Duplicate" as used here means a counterpart or facsimile copy of the original produced by the same impression or from the same matrix as the original or by some technique of accurate reproduction.

(e) Failure to comply with Section 1380(b) as to furnishing sufficient copies of exhibits, if it causes waste of time or delay, may be grounds for exclusion of the exhibits.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Renumbering and amendment of former section 1345 to new section 1387 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1388. Notice of Judicially Noticeable Facts.

In reaching a decision, the Arbitrator may take notice of, and find as true without proof, any fact which may be judicially noticed by the courts of this State, provided that the judicially noticed fact is set forth in the record.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Renumbering of former section 1346 to new section 1388 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1389. Record of the Proceedings.

The proceedings at the hearing shall be reported by a phonographic reporter or, with agreement of the Parties and consent of the Office of Administrative Hearings, otherwise perpetuated by mechanical, electronic, or other means capable of

reproduction or transcription.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

History

1. Renumbering and amendment of former section 1354 to new section 1389 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

Article 10. Decisions and Award

§ 1390. Decision on the Merits.

- (a) A written Decision on the Merits shall be filed with the Office of Administrative Hearings and shall contain a summary of the evidence, reasons underlying the decision and, unless the Parties otherwise agree, findings of fact and conclusions of law. A copy of the decision shall be served by the Office of Administrative Hearings on each of the Parties.
- (b) Objections to findings and conclusions may be filed by any Party within 15 days of receipt of the written decision. The Arbitrator shall consider the objections and may notice a hearing thereon.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.8 and 10245.4, Public Contract Code.

History

1. Renumbering and amendment of former Article 9 (Sections 380-382) to new Article 10 (Sections 39-393) filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 390 to new section 1390 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of subsections (a) and (b) and repealer of subsection (c) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment of subsection (a) by General Services, Transportation and Water Resources departments filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

§ 1391. Decision on Settlement.

If the Parties settle any claim, in whole or part, during the course of the Arbitration proceedings, the terms of the agreed settlement shall be incorporated in a decision, if requested by the Parties, and a final award shall be issued by the Arbitrator.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

History

1. Renumbering of former section 391 to new section 1391 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
2. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

§ 1392. Decision on Costs and Attorney's Fees.

- (a) The cost of conducting the Arbitration shall be borne equally by the Parties and in no case awarded to the prevailing Party. These costs shall include:
 - (1) The Arbitrator's fee.
 - (2) The costs of recording and transcribing the proceedings.
 - (3) Any fees necessary to secure and maintain a hearing room.
 - (4) Any fees for expert or technical advisors requested pursuant to Section 1333.
- (b) Other costs, including the filing fees, witness fees, costs of discovery, or any other cost necessarily incurred by one Party, other than attorney's fees, may be awarded to the prevailing Party in the Arbitrator's discretion on the same basis as is allowed in civil actions. These costs shall be taxed as in civil actions.
- (c) Reasonable attorney's fees may be awarded in accordance with Public Contract Code Section 10240.13 or other applicable law, if any.
- (d) A petition for interest, costs and attorney's fees must be filed by any Party within 15 days of receipt of the decision on any objections filed pursuant to Section 1390(b) or, if there is no objection, within 30 days of receipt of the Decision on the Merits. Any petition for interest, costs or attorney's fees shall be promptly determined and assessed by the Arbitrator in a separate hearing, as necessary, following the Decision on the Merits of the claim, and a Decision on Costs issued.

Note: Authority cited: Section 10240.5, Public Contract Code. Reference: Sections 10240.5 and 10240.13, Public Contract Code.

History

1. Renumbering of former section 392 to new section 1392 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
2. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
3. Amendment by General Services, Transportation and Water Resources departments of subsection (d) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

§ 1393. Final Award.

Any Decision on Costs, together with the Decision on the Merits, shall be reflected in a Final Award issued by the Arbitrator.

Note: Authority cited: Section 10240.5, Public Contract Code. Reference: Sections 10240.5 and 10240.13, Public Contract Code.

History

1. Renumbering of former section 393 to new section 1393 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25)
2. Amendment of section heading and section filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

Article 11. Certification of Arbitrators by the Public Works Contract Arbitration Committee

1395. Standards and Qualifications

- (a) Arbitrators shall have substantial experience in or directly related to public works construction projects, particularly large-scale complex projects with or on behalf of federal, state or local governmental agencies. Extensive experience in the resolution of disputes arising out of such projects is desirable. Knowledge of California construction law is necessary.
- (b) The experience in subdivision (a) may be met by a combination of factors, which shall include any one or more of the following:
 - (1) Five or more years' experience at the managerial or supervisory level in public works construction contracting with extensive experience in the resolution of disputes arising out of public contract claims.
 - (2) Five or more years' experience as an attorney representing parties in negotiating, litigating, or arbitrating public works construction contract claims.
 - (3) Five or more years' experience as a judge or arbitrator. This shall include extensive experience in adjudicating or otherwise resolving public works construction contract claims or other large-scale and/or complex commercial litigation.
- (c) Applicant qualifications are evaluated on an individual basis by the Public Works Contract Arbitration Committee. The Committee has discretion to waive the qualifications of (a) and/or (b) on an individual's demonstration of equivalent qualifications.

Authority cited: Section 10245.3, Public Contract Code.

Reference: Section 10245.3, Public Contract Code.

1398. Recertification of Arbitrators

Arbitrators certified to the panel shall be required to apply for recertification every seven years to remain on the panel. Arbitrators shall be evaluated for recertification on the basis of the current standards and qualifications.

Authority cited: Section 10245.3, Public Contract Code.

Reference: Section 10245.3, Public Contract Code.